

**STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS**

In the matter of:

AMERICAN SHELL COMPANY, INC.

Respondent.

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TDFI no: 07-117-C

EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Tennessee Department of Financial Institutions (the “Commissioner”), having determined that American Shell Company, Inc. (the “Respondent”), has violated and is violating the Tennessee Title Pledge Act, Tenn. Code Ann. §§ 45-15-101, *et seq.* (the “Title Pledge Act”), as well as the Deferred Presentment Services Act, Tenn. Code Ann. §§ 45-17-101, *et seq.* (the “DP Act”), and that extraordinary circumstances warrant immediate action, hereby issues the following EMERGENCY CEASE AND DESIST ORDER pursuant to Tenn. Code Ann. §§ 45-1-107(a)(4) and (c), Tenn. Code Ann. § 45-15-118(b)(3), and Tenn. Code Ann. § 45-17-116(c).

JURISDICTION AND IDENTIFICATION OF THE PARTIES

1. Pursuant to Tenn. Code Ann. § 45-1-104, the Tennessee Department of Financial Institutions (the “Department”) is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 of the Tennessee Code. Therefore, and pursuant to the Title Pledge Act and the DP Act, the Department is charged with executing all laws relative to the title pledge business and the business of providing deferred presentment services.

2. Tenn. Code Ann. § 45-1-107(a)(4) provides that the Commissioner has the power to order any person to cease violating a provision of Title 45 of the Tennessee Code or lawful regulation issued thereunder, and Tenn. Code Ann. § 45-1-107(c) allows the Commissioner to issue such an order without providing prior notice and opportunity for a hearing in cases involving extraordinary circumstances requiring immediate action, provided that a subsequent hearing be promptly afforded upon application to rescind the action taken.

3. Tenn. Code Ann. § 45-15-118(b)(3) provides that, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may order a person to cease and desist from violating the Title Pledge Act without providing the opportunity for a prior hearing, provided that a subsequent hearing be promptly afforded upon an application to rescind the action taken that is filed with the Commissioner within twenty (20) days after service of the emergency order.

4. Tenn. Code Ann. § 45-17-116(c) provides that, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may order a person to cease and desist from violating the DP Act without providing the opportunity for a prior hearing, provided that a subsequent hearing be promptly afforded upon an application to rescind the action taken that is filed with the Commissioner within twenty (20) days after service of the emergency order.

5. The Respondent is a domestic for-profit corporation whose principal office is located at 13728 Highway 69A, Suite B, Big Sandy, Tennessee 38221-0036. The Respondent's registered agent is James L. Peach whose address is listed with the Tennessee Secretary of State as 10 East Main Street, Camden, Tennessee 38320. At all

times relevant hereto, the Respondent has engaged in business operations at 107 Highway 641 North, Camden, Tennessee 38320, possibly under the name "Factory Jewelers."

FACTUAL ALLEGATIONS

6. Under the Title Pledge Act, the Department regulates title pledge lenders and the business of making title pledge loans, which regulation includes the investigation, licensing, and examination of said lenders.

7. The Respondent's location at 107 Highway 641 North, Camden, Tennessee 38320, has never been licensed by the Department to engage in the business of making title pledge loans.

8. Under the DP Act, the Department regulates deferred presentment services providers and the business of making deferred presentment transactions, which regulation includes the investigation, licensing, and examination of said providers.

9. The Respondent's location at 107 Highway 641 North, Camden, Tennessee 38320, was previously licensed by the Department under the DP Act from December 9, 1999 to September 30, 2006, having been issued license number 1936; however, said location has not been licensed under the DP Act since that time.

10. On or about December 4, 2007 and December 5, 2007, the Compliance Division of the Department lawfully had two (2) of its examiners by the names of Kevin Hicks and Patrick Somers (hereinafter, "Examiners") complete an examination of the Respondent's business at 107 Highway 641 North, Camden, Tennessee 38320 (hereinafter, "Examination").

11. Pursuant to the Examination, the Examiners examined the books, records, and papers of the Respondent, thereby discovering several transactions that appeared to be

relative to the Department's regulation, which transactions the Examiners fully documented including by making copies of any business reports, customer agreements, receipts, and/or other relevant documents (hereinafter, "Documents").

12. The Documents collected and photocopied pursuant to the Examination revealed that the Respondent made or renewed at least twenty-two (22) title pledge loans since November 1, 2005 on which the Respondent charged the consumers fees, including the following ten (10) transactions which represent a sampling of the Department's evidence:

- (1) An agreement to loan six hundred dollars (\$600.00) to a borrower with the initials P.C., secured by a 1991 GMC automobile, and dated November 14, 2005.
- (2) An agreement to loan two hundred dollars (\$200.00) to a borrower with the initials C.J., secured by a 1979 Ford automobile, and dated January 17, 2006.
- (3) An agreement to loan three hundred dollars (\$300.00) to a borrower with the initials R.M., secured by a 1994 Ford automobile, and dated March 1, 2006.
- (4) An agreement to loan three hundred dollars (\$300.00) to a borrower with the initials J.B., secured by a 1991 Oldsmobile automobile, and dated April 6, 2006.
- (5) An agreement to loan eight hundred dollars (\$800.00) to a borrower with the initials C.F., secured by a 1997 Ford automobile, and dated December 4, 2006.
- (6) An agreement to loan five hundred dollars (\$500.00) to a borrower with the initials E.S.O., secured by a 2004 Buick automobile, and dated February, 14, 2007.
- (7) An agreement to loan two hundred and fifty dollars (\$250.00) to a borrower with the initials C.W., secured by a 1995 Saturn automobile, and dated May 16, 2007.

- (8) An agreement to loan one hundred and fifty dollars (\$150.00) to a borrower with the initials K.S., secured by a 1997 Chevy automobile, and dated October 12, 2007.
- (9) An agreement to loan three hundred dollars (\$300.00) to a borrower with the initials D.B., secured by a 1987 Oldsmobile automobile, and dated November 15, 2007.
- (10) An agreement to loan five hundred dollars (\$500.00) to a borrower with the initials T.R., secured by a 1989 Isuzu automobile, and dated November 26, 2007.

13. The Documents collected and photocopied pursuant to the Examination revealed that, since October 1, 2006, the Respondent provided deferred presentment services pursuant to at least one thousand one hundred and forty-eight (1,148) transactions, in exchange for a fee, including the following ten (10) transactions, which represent a sampling of the Department's evidence:

- (1) An agreement on December 18, 2006 whereby the Respondent accepted a check from a customer with the initials G.A. in the amount of three hundred dollars (\$300.00), for deferred presentment ("DP") purposes, and in return for a fee of thirty dollars (\$30.00).
- (2) An agreement on January 9, 2007 whereby the Respondent accepted a check from a customer with the initials I.H. in the amount of three hundred dollars (\$300.00), for DP purposes, and in return for a fee of thirty dollars (\$30.00).
- (3) An agreement on February 20, 2007 whereby the Respondent accepted a check from a customer with the initials R.D. in the amount of three hundred dollars (\$300.00), for DP purposes, and in return for a fee of thirty dollars (\$30.00).
- (4) An agreement on March 8, 2007 whereby the Respondent accepted a check from a customer with the initials S.R. in the amount of three hundred dollars (\$300.00), for DP purposes, and in return for a fee of thirty dollars (\$30.00).
- (5) An agreement on July 6, 2007 whereby the Respondent accepted a check from a customer with the initials J.P. in the amount of one hundred and fifty dollars (\$150.00), for DP purposes, and in return.

for a fee of twenty-six dollars and forty-seven cents (\$26.47).

- (6) An agreement on August 2, 2007 whereby the Respondent accepted a check from a customer with the initials J.P. in the amount of three hundred dollars (\$300.00), for DP purposes, and in return for a fee of thirty dollars (\$30.00).
- (7) An agreement on September 1, 2007 whereby the Respondent accepted a check from a customer with the initials T.H. in the amount of two hundred dollars (\$200.00), for DP purposes, and in return for a fee of thirty dollars (\$30.00).
- (8) An agreement on August 24, 2007 whereby the Respondent accepted a check from a customer with the initials B.G.P. in the amount of three hundred dollars (\$300.00), for DP purposes, and in return for a fee of thirty dollars (\$30.00).
- (9) An agreement on November 29, 2007 whereby the Respondent accepted a check from a customer with the initials R.A. in the amount of three hundred dollars (\$300.00), for DP purposes, and in return for a fee of thirty dollars (\$30.00).
- (10) An agreement on December 3, 2007 whereby the Respondent accepted a check from a customer with the initials C.B. in the amount of three hundred dollars (\$300.00), for DP purposes, and in return for a fee of thirty dollars (\$30.00).

14. The above lengthy, continuing, and current pattern of engaging in title pledge and deferred presentment transactions since November, 2005, and October, 2006, respectively, is a strong indicator that the Respondent is currently engaging and will continue to engage in such transactions in the future, notwithstanding the fact that it is not in possession of either a title pledge license or a deferred presentment services license issued by the Department.

CAUSES OF ACTION

15. Tenn. Code Ann. § 45-15-105 provides that, as of November 1, 2005, no person shall engage in the business of title pledge lending without having first obtained a title pledge license from the Department, and that a separate license is required for each

location from which such business is conducted. Said statute also provides that any title pledge loans made without a license are void, in which case the lender forfeits the right to collect any moneys, including principal, interest, and fees. Furthermore, Tenn. Code Ann. § 45-15-106 provides that an applicant for a title pledge license must have a tangible net worth of not less than seventy-five thousand dollars (\$75,000) per location, and that the applicant must file an application showing to the Commissioner that it has the financial responsibility, financial condition, business experience, character, and general fitness to warrant the belief that its business will be conducted lawfully and fairly within the purposes of the Title Pledge Act. Tenn. Code Ann. § 45-15-106 also requires an applicant to obtain a surety bond or letter of credit in the amount of twenty-five thousand dollars (\$25,000) per location, payable to the Commissioner for the benefit of any person injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of the Title Pledge Act by the lender.

16. The factual allegations set forth in Paragraphs six (6) through fourteen (14), above, incorporated by reference herein, are sufficient to establish by a preponderance of the evidence that the Respondent violated Tenn. Code Ann. § 45-15-105 on at least twenty-two (22) separate occasions, ten (10) of which are specifically referenced herein. The Respondent's operation of an unlicensed title pledge business has deprived the Commissioner of the opportunity to determine whether the Respondent has the requisite financial responsibility, financial condition, business experience, character, and general fitness to warrant the belief that its business will be conducted lawfully and fairly within the purposes of the Title Pledge Act prior to the Respondent making title pledge loans to Tennessee consumers. The failure to comply with the licensing statute has also deprived

the Commissioner of a surety bond or letter of credit to pursue on behalf of any Tennessee consumers injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of the Title Pledge Act by the Respondent.

17. Tenn. Code Ann. § 45-17-103 provides that no person shall engage in the business of deferred presentment services without having first obtained a deferred presentment services license from the Department, and that a separate license is required for each location from which such business is conducted. Tenn. Code Ann. § 45-17-110 provides that a deferred presentment services license issued by the Department shall expire on the following September 30 unless it is properly renewed by the filing of a renewal application and renewal fee by September 1. Furthermore, Tenn. Code Ann. § 45-17-104 provides that an applicant for a deferred presentment services license must have a minimum net worth of not less than twenty-five thousand dollars (\$25,000) per location, and that the applicant must file an application showing to the Commissioner that it has the financial responsibility, financial condition, business experience, character, and general fitness to warrant the belief that its business will be conducted lawfully and fairly within the purposes of the DP Act.

18. The factual allegations set forth in Paragraphs six (6) through fourteen (14), above, incorporated by reference herein, are sufficient to establish by a preponderance of the evidence that the Respondent violated Tenn. Code Ann. § 45-17-103 on at least one thousand one hundred and forty-eight (1,148) separate occasions, ten (10) of which are specifically referenced herein. The Respondent's operation of a deferred presentment services business without a license has deprived the Commissioner of the opportunity to determine whether the Respondent has the requisite financial responsibility, financial

condition, business experience, character, and general fitness to warrant the belief that its business will be conducted lawfully and fairly within the purposes of the DP Act prior to the Respondent making deferred presentment agreements with Tennessee consumers.

19. Pursuant to Tenn. Code Ann. § 45-1-107(c), Tenn. Code Ann. § 45-15-118(b)(3), and Tenn. Code Ann. § 45-17-116(c), the Commissioner may issue an Emergency Cease and Desist Order without affording prior notice and opportunity for a hearing when extraordinary circumstances so require. Based on the history of unlicensed activity already committed, and the continuing pattern of making title pledge loans and providing deferred presentment services without a license to engage in either business, the likelihood exists that the Respondent will continue to violate both the Title Pledge Act and the DP Act by engaging in unlicensed activity; therefore, these extraordinary circumstances require immediate action by the Commissioner.

EMERGENCY ORDER

20. Having considered the factual allegations contained herein, the Commissioner has determined that the Respondent has violated and is violating both the Title Pledge Act and the DP Act, and that extraordinary circumstances warrant immediate action.

21. IT IS HEREBY ORDERED that the Respondent shall immediately cease and desist from engaging in the business of title pledge lending in this state including, but not limited to, entering into new title pledge agreements, renewing previously made title pledge agreements, collecting any moneys (including principal, interest, and/or fees) on previously made title pledge agreements, and repossessing any titled personal property intended to be security for a title pledge agreement made by the Respondent after November 1, 2005 while not licensed as a title pledge lender by the Department.

22. IT IS ALSO HEREBY ORDERED that the Respondent shall immediately cease and desist from engaging in the business of providing deferred presentment services in this state including, but not limited to, entering into new deferred presentment agreements (also known as “check advance agreements”).

23. The provisions of this ORDER shall remain in full force and effect unless and until such time as any provision shall have been modified, terminated, suspended or set aside by the Commissioner, an administrative judge, or any court having jurisdiction over the matters addressed herein.

RIGHTS OF THE RESPONDENT

24. The Respondent has the right to a prompt hearing for the purpose of contesting and obtaining rescission of this EMERGENCY CEASE AND DESIST ORDER. If a prompt hearing is timely requested by the Respondent, the hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.* (“UAPA”), and Chapter 0180-6 of the Department’s Rules.

25. At any prompt hearing held, the Department’s attorney may move for the sole issue to be considered of whether extraordinary circumstances existed so as to require immediate action in this matter, and for a final adjudication upon the merits to be determined at such time that a contested case may be promptly instituted by the filing and service of a Notice of Opportunity for Hearing and a Notice of Charges.

26. In order to request a prompt hearing, the Respondent must file a written request with the Commissioner within twenty (20) days from receipt of this EMERGENCY CEASE AND DESIST ORDER. Any such written request must be filed with the Commissioner, Tennessee Department of Financial Institutions, Nashville City

Center, 511 Union Street, 4th Floor, Nashville, Tennessee 3729. If no such written request is timely filed, then this EMERGENCY CEASE AND DESIST ORDER shall be deemed a Final Order under the UAPA without further legal process.

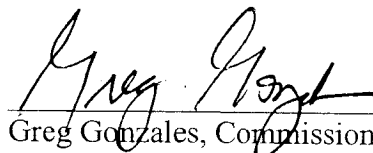
27. The Respondent may submit to the Commissioner a petition for stay of effectiveness of this EMERGENCY CEASE AND DESIST ORDER or the Final Order within seven (7) days of entry, pursuant to Tenn. Code Ann. § 4-5-316.

28. The Respondent may file a Petition for Appeal with the Commissioner within fifteen (15) days of entry of this EMERGENCY CEASE AND DESIST ORDER, pursuant to Tenn. Code Ann. § 4-5-315(b).

29. The Respondent may file a Petition for Reconsideration with the Commissioner, stating the specific grounds upon which the relief is requested, within fifteen (15) days of entry of this EMERGENCY CEASE AND DESIST ORDER or the Final Order, pursuant to Tenn. Code Ann. § 4-5-317.

30. The Respondent may seek judicial review of this EMERGENCY CEASE AND DESIST ORDER by filing a Petition for Judicial Review in the chancery court of Davidson County, Tennessee, within sixty (60) days of the date that this Order becomes a Final Order. The filing of a Petition for Reconsideration does not act to extend the sixty (60) day period; however, if the Petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the Petition.

ENTERED AND EFFECTIVE, this the 20th day of December, 2007.



Greg Gonzales, Commissioner
Tenn. Dept. of Financial Institutions